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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/829,087	04/20/2004	Naila K. Khalaf	USP2401A-NKK	6011

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EXAMINER

DEMILLE, DANTON D

ART UNIT	PAPER NUMBER
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3771

MAIL DATE	DELIVERY MODE
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10/17/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/829,087

Applicant(s)

KHALAF, NAILA K.

Examiner

Danton DeMille

Art Unit

3771

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 26 July 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 21-38 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 21-38 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Drawings

The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the cushion layer as recited in claim 35 for example must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

The amendment filed 26 July 2007 is objected to under 35 U.S.C. 132(a) because it introduces new matter into the disclosure. 35 U.S.C. 132(a) states that no amendment shall introduce new matter into the disclosure of the invention. The added material which is not

supported by the original disclosure is as follows: there appears to be no support for the massaging device to effectively deliver massage impulse to an exterior of said massager body “only through said treatment surface”. Claim 21 now recites that the device delivers the massage impulse “only” through the treatment surface. The device as originally filed would not appear to be limited to delivering the massage to the user “only” through the treatment surface. As shown in figure 1, the massager body is mounted on the outside surface of the seat belt therefore vibration would be transferred from the inner treatment surface 111 to the seat belt 80 and then to the user. With the seat belt 80 absorbing the vibration it would appear that the vibration would be transferred to the user from the seat belt and not “only” through the treatment surface. It is not clear how the massage device as originally disclosed can be claimed “to effectively deliver massage impulse to an exterior of said massager body only through said treatment surface” when it is not the inner treatment surface at all but rather the seat belt.

Applicant is required to cancel the new matter in the reply to this Office Action.

Claim Rejections - 35 USC § 112

Claims 21-38 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. It is not clear how the device delivers the massage impulse “only” through the treatment surface as noted above in the objection to the amendment.

Claims 21-38 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as

the invention. It is not clear how the massaging device can deliver the massage impulse only through the treatment surface when in fact it is the seat belt that delivers the massage impulse to the body of the user. There appears to be nothing disclosed that would provide this function. What additional other structure does this claim limitation require?

Claim 21 also recites first and second elongated fastening straps “frontwardly extended” from the massager body. It is not clear which direction is frontward. There has been no frontward or backward recited.

Claim 21, line 3, “message” would appear to more appropriately be --massage--.

There is no clear antecedent basis for “said access opening” in claim 31.

Claim Rejections - 35 USC § 103

Claims 21, 22, 25, 26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lunn.

Lunn teaches the heart of applicant’s invention. Lunn teaches a seat belt massager for detachably fastening on a seat belt comprising a massager body 10 defining an inner treatment surface 22 and a massaging device 12 supported on the massage portion 16. The massage device 12 is adapted to effectively deliver massage impulse to an exterior of the massager body 16 only through the treatment surface 22 to the body of the user. The inner treatment surface 22 is what contacts the user’s body. As understood applicant’s pocket 112 containing the vibrator is on the opposite side of the massage body 10 from applicant’s inner treatment surface 111 as shown in figure 3. The same is true for Lunn’s device. The vibrator 12 is on the opposite side of the massage body 16.

A seat belt fastening arrangement includes first 26 and second 28 elongated fastening straps frontwardly extended from the massager body wherein the two end portions 26, 28 of the fastening straps overlappedly communicating with each other to define a connecting loop within the two fastening straps such that the seat belt is adapted to slidably pass through the connecting loop. While Lunn teaches snaps 30 as fastening means provided on the massager body for detachably fastening the massager body on the seat belt they may not be adjustably connected together. There appears to be no unobviousness to using any other conventional means for attaching the two ends of the straps together in order to form the connecting loop. Hook and loop fastening means is one conventional means for fastening the two ends of the straps together. The examiner takes official notice that hook and loop fastening means are well known to the artisan of ordinary skill as a means to fasten two straps together quickly, economically and also provide adjustability. It would have been obvious to one of ordinary skill in the art to modify Lunn to use hook and loop fastening means instead of the snap fasteners 30 as taught by Lunn providing the predictable results of quick and economical means of fastening the two straps together that also provide adjustability.

Regarding claim 22, the pocket 14 has access openings at both ends.

Claims 22-24, 26-30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lunn in view of Sears.

Lunn may not disclose the details of the inner workings of the vibrator because such is well within the realm of the artisan of ordinary skill. Any conventional arrangement would have been an obvious provision. Sears teaches the convention of using a battery operated motor with an eccentric weight in a pocket attached to a belt. It would have been obvious to one of ordinary

skill in the art to modify Lunn to use a conventional battery, motor and eccentric weight as taught by Sears to provide the details of the vibration device.

Regarding claims 26-28, Lunn teaches snaps 30 for securing the strap to the belt however, hook and loop fastening means would have been an obvious and cheaper means of securing the device to the seat belt. The examiner takes official notice that hook and loop fastening means are well known to the artisan of ordinary skill as a means to fasten two straps together quickly, economically and also provide adjustability. It would have been obvious to one of ordinary skill in the art to further modify Lunn to use hook and loop fastening means for the snaps as an obvious equivalent means for performing the same purpose.

Claims 23, 24, 27, 28, 29, 30, 31, 32, 33, 34, 37, 38 are rejected under 35 U.S.C.

103(a) as being unpatentable over Lunn in view of Hajianpour.

Lunn may not disclose the details of the inner workings of the vibrator because such is well within the realm of the artisan of ordinary skill. Any conventional arrangement would have been an obvious provision. Hajianpour teaches the convention of using a battery operated motor with an eccentric weight in a pocket attached to a belt. It would have been obvious to one of ordinary skill in the art to modify Lunn to use a conventional battery, motor and eccentric weight as taught by Sears to provide the details of the vibration device.

Regarding claims 33, 34, Hajianpour appears silent with regard to how the cover comes off the pocket housing 10. Clearly the pocket would have to have an access opening for access the batteries to replace them. A conventional cover that is retained by using a snap or friction fit would have been an obvious provision to one of ordinary skill in the art and would appear to provide a "flipping cover" for overlappedly covering the receiving pocket.

Claims 35, 36 are rejected under 35 U.S.C. 103(a) as being unpatentable over the references as applied to claims 33, 34 above, and further in view of Aruin et al.

There appears to be no unobviousness to provide a cushion or comfortable layer around the device to protect the user from any sharp or hard surfaces since the device is pressed against the user. Aruin teaches a protective layer 14 for cushioning the device from the user. It would have been obvious to one of ordinary skill in the art to further modify Lunn to include a cushion layer as taught by Aruin to provide a layer of protection for the user.

Response to Arguments

Applicant's arguments filed 26 July 2007 have been fully considered but they are not persuasive.

Applicant argues that “the instant invention, which discloses seat belt massager, should not be the same invention as Lunn patent which discloses seat belt vibrator comprising a vibrator and means for securing the vibrator to the seat belt”. It is not clear what the difference is. The instant invention is also a seat belt vibrator comprising a vibrator and means for securing the vibrator to the seat belt. Applicant’s seat belt massager includes a vibrator 20 and means 311 and 312 for securing the vibrator to the seat belt.

Moreover, it is not clear how the claims define this difference over Lunn. Even if Lunn is somehow different from the instant invention the claims do not define this distinction over Lunn. The only difference between claim 21 and Lunn is the use of an adjustable seat belt fastening means. Using conventional hook and loop fastening means instead of snaps is not a patentable difference and does not distinguish a seat belt massager from the vibrator attached to a seat belt.

Applicant further argues the instant invention defines over Lunn by including an “*inner treatment surface*”. It is not clear how this distinguishes over Lunn because both Lunn and the instant invention produces vibrations that would vibrate the entire device and the seat belt in which it is secured. Therefore, there would be an inner surface somewhere on the device that would be called an inner treatment surface. Just as the instant invention has a surface that is innermost or closest to the user so does Lunn. Just as the vibration of the instant invention is transmitted from the vibrator 20 to an inner surface 111 of the supporting body 10 to the user, Lunn also teaches the vibration is transmitted from the vibrator 12 to an inner surface (16 of figure 3) of the supporting body to the user. Merely reciting the device has an inner treatment surface does not define over Lunn.

Applicant also argues that Lunn does not teach a seat belt fastening arrangement comprising first and second elongated fastening straps. It is not clear how this defines over Lunn. Lunn also teaches a first 26 and second 28 elongate straps forwardly extending and these two end portions overlappedly communicate with each other to define a connecting loop.

Applicant also argues that Lunn does not teach the massage impulse being delivered “*only through the treatment surface*”. As noted supra, it is not clear how the instant invention provides this limitation since like Lunn, the instant invention includes a vibrator 20 that is secure to a seat belt wherein the vibrator 20 to transmit the vibration into the seat belt since the seat belt is secured to the device. The seat belt would then also transmit some of the vibration to the user. Therefore the seat belt massager of the instant invention would deliver some of the vibration to the user through the seat belt and not “only through the treatment surface”.

To any extent applicant's invention transmits the vibration "only through the treatment surface" so does Lunn. Lunn has an inner treatment surface on the inside of strap 16 that would contact the user just as applicant's inner treatment surface 111 contacts the user.

Applicant also argues that Lunn teaches that the vibration is transmitted through "at least a plurality of physical layers". It is not clear how much weight can be given this argument because there is no claim language to distinguish this feature from Lunn. There is nothing claimed that somehow limits the invention to not transmitting through a plurality of physical layers. Moreover, it is not clear how this would distinguish over Lunn since the vibrator 12 transmits the vibration directly to the strap 16 which is directly in contact with the user.

Regarding Lunn in view of Sears, applicant argues that neither Lunn nor Sears teach the massager body having a receiving pocket formed on the massage portion and defining an access opening. It is not clear how applicant can disregard the teaching of Lunn providing a massager body 10 having a receiving pocket 14 formed on the massage portion 16. The pocket 14 has access openings at both ends. The massaging device 12 is "disposed" in the receiving pocket 14 via the access opening. Therefore it would appear Lunn anticipates this claim language.

Regarding the arguments that Lunn doesn't teach the massaging device as "completely" disposed in the receiving pocket, the claims to not recite "completely" disposed and therefore Lunn does not have to show it.

Regarding the argument that claims 23-24 provide a battery, motor and eccentric weight in addition to what is already claimed is not obvious. Lunn appears silent with regard to the details of what type of vibrator is used for vibrator 12. One wishing to complete the details would look to Sears to find the provision of a conventional motor, eccentric weight and battery

to provide such details. Sears provides a pocket 14 attached to a belt 1 using a conventional motor, eccentric weight and battery disposed completely within the pocket as shown in figure 4. While Lunn shows a bullet shaped vibrator, Sears teaches a generic form of a vibrator disposed within a pocket. Such would have been an obvious equivalent alternative vibrator to the vibrator of Lunn for providing the very same function.

Regarding claims 33-34, Lunn happens to show in the drawings a bullet shaped vibrator held in an open ended pocket however, does not teach exactly what type of arrangement provides the vibration. Sears is merely cited to teach the details of how one can attach a very small vibrator arrangement onto a belt using a motor, eccentric weight and battery held within a pocket attached to a strap. Lunn teaches a vibrator arrangement attached to a strap including a pocket. Sears is merely a teaching for providing the details of a motor rotating an eccentric weight and battery to be contained within a pocket. Absent the details of the vibrator one of ordinary skill in the art would use the teaching of Sears to provide the motor, eccentric weight and battery disposed within a pocket for the vibrator disposed within the pocket of Lunn and reasonably expect the same results since both are obvious equivalent alternative vibrators for providing the same function.

Regarding claims 35-38, providing padding where ever desired or required would have been an obvious provision to protect the user from any rigid elements from digging into the user. Lunn uses a rigid stay 32 to prevent the strap from wrinkling or buckling the belt when attached. This rigid stay may dig into the patient. Providing padding to protect the user would have been obvious to one of ordinary skill in the art.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Danton DeMille whose telephone number is (571) 272-4974. The examiner can normally be reached on M-F from 8:30 to 6:00 EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Justine Yu, can be reached on (571) 272-4835. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Art Unit: 3771

14 October 2007

/Danton DeMille/

Danton DeMille
Primary Examiner
Art Unit 3771